

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Patent Application of

Daniel LAZARETNIK

Serial No.: 10/821,449

Filed: April 8, 2004

For: OVAL SHAPED TIMEPIECES AND STEM ARRANGEMENT FOR WATCHES

Confirmation No. 1335

Date: February 21, 2007

Group Art Unit: 2841

Examiner: Vit W. MISKA

VIA EFS-WEB

Commissioner for Patent

P.O. Box 1450

Alexandria, VA 22313-1450

**AMENDED APPEAL BRIEF PURSUANT TO 37 C.F.R. §41.37
IN RESPONSE TO THE NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Sir:

In support of the Notice of Appeal filed September 19, 2006 and the Appeal Brief filed December 19, 2006, this amended Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief mailed on January 25, 2007. It is respectfully submitted that this amended Appeal Brief complies with all of the requirements of 37 C.F.R. §41.37(c).

This appeal is from the Examiner's final rejection of this application.

Real Party in Interest

The real party in interest is the applicant, Daniel Lazaretnik.

Related Appeals and Interferences

The applicant, and the undersigned attorneys are not aware of any related appeals and interferences.

Status of Claims

Claims 30 is pending and on appeal herein.

Claims 1-29 have previously been canceled.

Status of Amendments

An Amendment/Submission was filed on September 19, 2006 containing arguments regarding the patentability of the claims, which was filed after the final rejection of June 19, 2006. The Amendment was entered but was not deemed to place the application in condition for allowance, as explained in an Advisory Action dated October 25, 2006. A Voluntary Amendment canceling claims 1-29 was submitted on December 19, 2006.

Summary of Invention

The invention concerns a timepiece. The timepiece has the following elements:

A timepiece comprising:

- a dial face (28, ¶33) having a circumferential boundary surrounding the dial face and having a geometric center, the dial face also being such that the circumferential boundary (30, ¶33) thereof is oval shaped, defining a long axis (26, ¶35) and a short axis extending perpendicularly to the long axis;

- a first time movement (42, ¶35) including respective hour and minute handles;

- a second time movement (44, ¶35) including respective hour and minute handles; and

- wherein said first and second time movements are arranged in spaced relationship to each other (¶35), with their centers spaced from each other along the long axis of said oval shaped dial face;

- a first stem arrangement (¶¶37, 38) comprising a plurality of stems coupled to and controlling the first time movement and a second stem arrangement comprising a plurality stems coupled to and controlling the second time movement;

- wherein the first stem arrangement is located to a left side (Fig. 1c) of the first time movement and the second stem arrangement is located to a right side of the second time movement (Fig. 1c); and

- a watch band (24, ¶32) aligned with the short axis.

Issues

Claim 30 stands rejected on grounds of obviousness over Farash (US 2003/0151980), in view of Kamiyama (5,339,293).

Argument

Claim 30 specifically states that the dial face is such that it has as circumferential boundary which is “oval shaped, defining a long axis and a short axis extending perpendicularly to the long axis”.

Claim 30 further recites that there are provided “a first stem arrangement comprising a plurality of stems coupled to and controlling the first time movement and a second stem arrangement comprising a plurality of stems coupled to and controlling the second time movement” (emphasis added).

Claim 30 further provides that “the first stem arrangement is located to a left side of the first time movement and the second stem arrangement is located to the right of the second time movement”. In other words, one plurality of stems is on the right. The other set is on the left.

Claim 30 also provides “a watch band aligned with the short axis.”

Neither of the two references cited by the Examiner has any of the four features mentioned above. The claimed features are being dismissed in the Office Action out of hand, as though not being important.

The Office Action has relied on Fig. 4 of the primary Farash reference. The shape of the dial in Farash is neither oval, nor does it have a long axis and a minor axis. To the contrary, the width and the height of the watch dial are equal at their widest separation, approximately three centimeters each. Furthermore, it is meaningless to say that the Farash watch dial has a band which is aligned with “the short axis”. This prior Farash art does not have a short axis.

An oval shape as defined in claim 30 is uniquely suited for placing two large-size movements, which are displaced along the hand extension alongside one another. In Farash, the width and the height are of the same size, and the movements have to be small to accommodate this condition. Respectfully, the Examiner should not dismiss features which the applicant and the marketplace deem to be important, as being trivial.

Insofar as the stem arrangements are concerned, the claim explicitly calls for a plurality of stems on the right side and a plurality of stems on the left side. The plurality of stems on the right side control one movement and the plurality of stems on the other side controls the other movement. In applicant's prior Response, the Kamiyama reference, as described at column 6, lines 10-30 of that reference each of push buttons 9, 10 and 11 controls the settings of a respective single one of three time movements. Thus, each button is used for a different one of the time movements. Therefore, the time movement 4 has only one button associated therewith and the time movement 6 has a different single button associated therewith, and so on, which is contrary to the language of claim 30. Nor are the time movements in these secondary Kamiyama reference spaced along the long axis of an oval shaped dial face.

The final Office Action, states at paragraph 4 that: "Kamiyama, et. al. suggests several setting buttons 8-11 for separately controlling various timepiece functions in a watch with plural movements." If this statement is intended to say that each time movement has a plurality of stems to control its movement, then applicant respectfully requests specific citations to the text, by identifying the column and the specific lines where there is such a disclosure. Applicant believes that there is no such disclosure in the cited prior art.

As noted above, specific claim limitations have not been addressed in the Final Rejection. Thus, the prior art does not show an oval watch with a long axis and a short axis. The prior art does not show an oval shape. The prior art does not show a band aligned with the short axis of the oval dial face. The prior art does not show a plurality of stems located on one side of the oval watch (in other words, on one side of the short axis and another set of stems located to the other side of the short axis) and dedicated for controlling the second time movement.

For these reasons, the Office Action has not set out a prima facie case of obviousness of the applicant's invention, as defined in claim 30, and the rejection thereof should be reversed.

Evidence Appendix

None.

Related Proceedings Appendix

None.

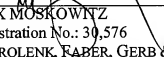
Conclusion

If this communication is filed after a shortened statutory time period has elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. §1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. §1.135. The fee under 37 C.F.R. §1.17 should be charged to our Deposit Account No. 15-0700.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge the underpayment to Deposit Account No. 15-0700.

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY
THROUGH THE UNITED STATES
PATENT AND TRADEMARK OFFICE
EFS FILING SYSTEM
ON FEBRUARY 21, 2007

Respectfully submitted,



MAX MOSKOWITZ
Registration No.: 30,576
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700

APPENDIX

The Claim on Appeal is:

30. A timepiece comprising:

a dial face having a circumferential boundary surrounding the dial face and having a geometric center, the dial face also being such that the circumferential boundary thereof is oval shaped, defining a long axis and a short axis extending perpendicularly to the long axis;

a first time movement including respective hour and minute handles;

a second time movement including respective hour and minute handles; and

wherein said first and second time movements are arranged in spaced relationship to each other, with their centers spaced from each other along the long axis of said oval shaped dial face;

a first stem arrangement comprising a plurality of stems coupled to and controlling the first time movement and a second stem arrangement comprising a plurality stems coupled to and controlling the second time movement;

wherein the first stem arrangement is located to a left side of the first time movement and the second stem arrangement is located to a right side of the second time movement; and

a watch band aligned with the short axis.